



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0252]

RIN 1625-AA09

Drawbridge Operation Regulation; Wolf River, Gills Landing and Winneconne, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the operating schedule that governs the Winneconne Highway Bridge at Mile 2.4, and the Canadian National Railroad Bridge at mile 27.8, both over the Wolf River. A review of the current regulation was requested by the Wisconsin Department of Transportation (WDOT) and the Canadian National Railroad.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0252 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902-6085, e-mail Lee.D.Soule@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | <u>Federal Register</u> |
| NPRM | Notice of Proposed Rulemaking |
| § | Section Symbol |
| U.S.C. | United States Code |

A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG-2013-0252), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, type the docket number [USCG-2013-0252] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0252) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the

individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [Insert date 20 days after date of publication in the FEDERAL REGISTER] using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The existing regulation for Wolf River (33 CFR 117.1107) addresses only one of the two drawbridges over Wolf River, and has not been revised since the overall recodification of federal drawbridge regulations in 1984.

This proposed rule was developed in conjunction with locally applied bridge schedules implemented by WDOT and Fox River Valley Navigation Authority for the past 10 to 15 years. These agencies, along with Canadian National Railroad, have reviewed and approved this proposed rule.

C. Basis and Purpose

The Wolf River extends from its head of navigation in New London, WI and travels south to Winneconne, WI where it confluences with the Upper Fox River. The Wolf River has two drawbridges over the waterway. The Winneconne Highway Bridge at mile 2.4 is a bascule bridge that provides 70 feet horizontal clearance, 7 feet vertical clearance in the closed position, and an unlimited vertical clearance in the open position. The Canadian National Railroad Bridge at Mile 27.8 is a former swing bridge that was converted to a vertical lift bridge in 2012 that provides 56 feet horizontal clearance, 7 feet vertical clearance in the closed position, and a vertical clearance of 16 feet in the raised position. Marine traffic on the waterway consists of small commercial vessels, and both power and sail recreational vessels. The Coast Guard has been advised of the updated navigation needs on Wolf River, including reports there has been an increase in recreational vessel usage of the waterway due to improvements to the lock system, dredging projects, and restored drawbridges over the Fox River that connect directly with the Wolf River. The purpose of this proposed rule is to establish consistent operating schedules that will meet the needs of current and future navigation on the Wolf River and to provide consistency in regulations for the rest of the connecting waterways.

D. Discussion of Proposed Rule

The current regulation does not include the Canadian National Railroad Bridge. Bridge logs were not available for review. The Coast Guard has made inquiries to local marinas and the Fox River Valley Navigation Authority and determined a 6-hour advance notice for the Canadian National Railroad Bridge from April 20 to October 15 would meet the needs of current navigation since the vertical clearance allows most of the vessel traffic to pass under the bridge without an opening. The Canadian National Railroad Bridge is in a remote location and the only access to the bridge by the drawtender is by boat. A 12-hours advance notice from October 16 to April 19 would be required for openings.

Currently, the Winneconne Bridge opens on signal between the hours of 7 a.m. and 11 p.m., daily, and requires a 2-hour advance notice of arrival for openings from May 1 to October 31 between the hours of 11 p.m. to 7 a.m., daily. From November 1 to April 30 mariners are required to provide a 12-hour advance notice for openings. WDOT has operated the Winneconne Highway Bridge during the navigation season in recent years from April 20 to October 7, with 2-hours advance notice between midnight and 8 a.m. Slight adjustments were made in the development of this proposed rule. Bridge openings on signal are proposed from April 20 through October 15, except from midnight to 8 a.m. when 2-

hours advance notice is required for openings.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This proposed rule incorporates the locally applied bridge schedules that have been employed in recent years, with only small variations. The proposed schedule was reviewed and approved by the bridge owners and representatives of local boating organizations. This proposed rule is expected to improve access to the waterway and establish operating regulations that meet the needs of the boating public in an easy to read language.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-

612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the Winneconne Bridge from midnight to 8 a.m. will need to provide a 2-hour advance notice of arrival for bridge openings, and at all hours a 6-hour advance notice for openings at the Canadian National Railroad Bridge. These operating hours would affect both drawbridges throughout the boating season from April 20 to October 15. Impacts to small entities are not expected to be significant as these schedules have effectively been in place for numerous years and are accepted by local vessel operators. During the winter when the waterway is typically ice covered, mariners will be required to provide a 12-hour advance notice for openings for both bridges, as applicable. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards.

Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117
Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.1107 to read as follow:

§117.1107 Wolf River

(a) The draw of the Winneconne Highway bridge, mile 2.4 at Winneconne, shall open on signal; except that, between the hours of midnight and 8 a.m., from April 20 through October 15, at least 2-hours of advance notice is required, and from October 16 through April 19, at least 12-hours of advance notice is required. Advance notice shall be provided to the Winnebago County Highway Department.

(b) The draw of the Canadian National Railroad Bridge, mile 27.8 at Gill's Landing, shall open on signal if at least 6-hours advance notice is provided from April 20 through October 15, and if at least 12-hours advance notice is provided from October 16 through April 19.

Dated: April 26, 2013

M. N. PARKS

Rear Admiral, U. S. Coast Guard

Commander, Ninth Coast Guard District

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